

DECISION-MAKER:	LICENSING (GENERAL) SUB - COMMITTEE		
SUBJECT:	APPLICATION FOR VARIATION OF A SEXUAL ENTERTAINMENT VENUE (SEV) LICENCE – FOR YOUR EYES ONLY, 135 – 136 HIGH STREET, SOUTHAMPTON. SO14 2BR.		
DATE OF DECISION:	17th AUGUST 2020 – 1600 HOURS		
REPORT OF:	SERVICE DIRECTOR – COMMUNITIES, CULTURE AND HOMES		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY		
N/A		
BRIEF SUMMARY		
The Licensing (General) Sub-Committee is requested to determine the application for the variation of a Sexual Entertainment Venue (SEV) Licence from Hampshire Restaurants Limited in respect of For Your Eyes Only, 135 – 136 High Street, Southampton, SO14 2BR. This matter has been delayed due to Covid 19, however the premises has not been trading at this time due to government restrictions.		
RECOMMENDATIONS:		
1.	(i)	For the Sub-Committee to consider and determine the application for the variation of the Sexual Entertainment licence in respect of 135 – 136 High Street, Southampton.
REASONS FOR REPORT RECOMMENDATIONS		
2.	The determination of applications for variation of sexual entertainment licences is not delegated to officers, therefore it is for the sub-committee to consider and determine the application.	
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
3.	None	
DETAIL (Including consultation carried out)		
4.	The Council originally adopted Schedule 3 of the 1982 Act in so far as they related to sex shops and sex cinemas in 1983 and readopted them with effect from 3 rd July 1995.	
5.	The Policing and Crime Act 2009 amended the Local Government (Miscellaneous Provisions) Act 1982 with effect from 6 th April 2010, by introducing a new category of sex establishment called Sexual entertainment venues (SEVs) enabling local licensing authorities to adopt provisions for the	

	<p>regulation of lap dancing clubs and similar venues under Schedule 3 of the 1982 Act. Previously the power was limited to sex shops and sex cinemas. On 11th July 2012, Council resolved to adopt the provisions of schedule 3 to the Local Government (Miscellaneous Provisions) Act 1982 which relate to the licensing of SEVs.</p> <p>The new regime came into force in Southampton on 20th August 2012 (known as the “first appointed day”), after which a 12 month transition period has been in effect.</p> <p>The effect of the transitional period is that existing operators, who, immediately before the first appointed day, had a Licensing Act 2003 premises licence and lawfully used the premises as a sexual entertainment venue under that licence (or were undertaking preparatory work to use the venue in that way), were allowed to continue to provide relevant entertainment until the 20th August 2013 (the “third appointed day”) or the determination of any application they have submitted before the 20th February 2013 (the “second appointed day”), whichever is later.</p> <p>After the third appointed day, the regime, and any licences granted, will be fully in force.</p> <p>The Legislation – Definitions</p> <p>Paragraph 2A of Schedule 3 as inserted by section 27 sets out the meaning of a “sexual entertainment venue” and “relevant entertainment” for the purposes of the statutory provisions.</p> <p>A sexual entertainment venue is defined as: <i>“Any premises at which relevant entertainment is provided before a live audience for the financial gain of the organiser or entertainer.”</i></p> <p>Relevant entertainment is defined as: <i>“Any live performance or live display of nudity which is of such a nature that, ignoring financial gain, it must reasonably be assumed to be provided solely or principally for the purpose of sexually stimulating any member of an audience (whether by verbal or other means).”</i></p> <p>It should be noted that an audience can consist of just one person e.g. when the entertainment takes place in private booths.</p> <p>Relevant entertainment is therefore different from regulated entertainment as defined in the Licensing Act 2003.</p>
6.	<p>Hampshire Restaurants Limited has held a sexual entertainment venue (SEV) licence in Southampton since 22nd October 2015 following a transfer application issued with delegated powers, with the licence to be renewed annually.</p> <p>As of 14th February 2020, Hampshire Restaurants Limited operate another Sexual Entertainment Venue in Bournemouth.</p>
7.	<p>On 14th February 2020 an application was made by Hampshire Restaurants Limited to vary the Sexual Entertainment Venue licence in respect of 135 -136 High Street, Southampton. The application submitted is a request to amend the current conditions as a result of a summary review of the licence granted</p>

	to the premises under the Licensing Act 2003. A copy of the application is attached as Appendix 1 .
8.	In summary, this application is to amend the Sexual Entertainment Venue licence in order that it addresses the matters raised in the summary review of the Licensing Act 2003 premises licence. A copy of the current licence is attached as Appendix 2 .
9.	There is no requirement under the Act to advertise a variation of the licence in a newspaper. A notice was displayed at the premises throughout the consultation period. There is no formal mechanism of consultation for this process, although a copy of the proposed variation was served on Hampshire Constabulary Force Licensing Team.
10.	The Hampshire Constabulary Force Licensing Team have not responded to this application, however submitted a Summary Review of the Licensing Act 2003 premises licence for the premises on 13 th January 2020. This matter was determined by the Licensing (Licensing and Gambling) Sub – Committee on 10 th February 2020. A copy of the decision notice is attached as Appendix 3 . A copy of the current Licensing Act 2003 premises licence is attached as Appendix 4 .
11.	The Sex Establishment licence held by Hampshire Restaurants Limited is renewed annually. The current licence expires on the 19 th August 2020. Previous renewal applications have been granted following no representations to the application. A renewal application was received on 10 th July 2020.
12.	Paragraph 18 of the Local Government (Miscellaneous Provisions) Act 1982 provides that the holder of a sexual entertainment venue (SEV) licence may at any time apply for any variation of the terms, conditions or restrictions on or subject to which the licence is held.
13.	The authority may; <ul style="list-style-type: none"> • Make the variation specified in the application; or • Make such variations as they think fit; or • Refuse the application.
14.	Any person objecting to an application for the variation of a Sexual Entertainment Venue (SEV) licence is required to give notice of their objection in writing to the local authority, not later than 28 days after the date of the application. No objections were received in relation to this application within the 28 day consultation period.
15.	An applicant for the variation of the terms, conditions or restrictions on or subject to which any such licence is held whose application is refused may appeal within twenty-one days of the giving of written notice of the grounds of the refusal, to the Magistrates' Court.
16.	A note of the procedure that the Sub-Committee has adopted for consideration of applications of this kind is attached as Appendix 5 .
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
17.	There are no financial implications.
<u>Property/Other</u>	
18.	Not applicable.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

19. Paragraph 12 of Schedule 3 sets out the grounds for refusing an application for the grant, renewal or transfer of a licence.
A licence must not be granted:
(a) to a person under the age of 18;
(b) to a person who is for the time being disqualified due to the person having had a previous licence revoked in the area of the appropriate authority within the last 12 months;
(c) to a person, other than a body corporate, who is not resident in an EEA State or was not so resident throughout the period of six months immediately preceding the date when the application was made; or
(d) to a body corporate which is not incorporated in an EEA State; or
(e) to a person who has, within a period of 12 months immediately preceding the date when the application was made, been refused the grant or renewal of a licence for the premises, vehicle, vessel or stall in respect of which the application is made, unless the refusal has been reversed on appeal.
20. If the Sub-Committee determines to grant a variation application, it has power to impose terms, conditions and restrictions on that licence, either in the form of conditions specific to the individual premises concerned or standard conditions applicable to all sex establishments, or particular types of sex establishments.
Examples of the matters that standard conditions may address can include, but are not restricted to:
- The hours of opening and closing
 - Displays and advertisements on or in sex establishments
 - The visibility of the interior of a sex establishment to passers-by
 - Any change of use from one kind of sex establishment to another.
- If such standard conditions are introduced by the local authority, they will apply to every licence granted, renewed or transferred by the authority unless they have been expressly excluded or varied.

Other Legal Implications:

21. **CRIME AND DISORDER ACT 1998**
Section 17 of the Crime and Disorder Act 1998 places the Council under a duty to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
22. **HUMAN RIGHTS ACT 1998**
The Act requires UK legislation to be interpreted in a manner consistent with the European Convention on Human Rights. It is unlawful for the Council to act in a way that is incompatible (or fail to act in a way that is compatible) with the rights protected by the Act. Any action undertaken by the Council that could have an effect upon another person's Human Rights must be taken having regard to the principle of proportionality - the need to balance the rights of the individual with the rights of the community as a whole. Any action taken by the Council which affects another's rights must be no more onerous than is necessary in a democratic society. The matter set out in this report must be considered in light of the above obligations.

23.	EQUALITY ACT 2010 Section 149 of the Equality Act 2010 requires the Council to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act. It also requires the Council to advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. This means having due regard to the need to removing or minimising disadvantages suffered, taking steps to meet the needs of persons, encouraging persons to participate in public life, tackling prejudice and promoting understanding. The relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.
24.	RISK MANAGEMENT IMPLICATIONS The risk is assessed as low. There are no finance or service delivery implications. Failure to implement the appropriate conditions could impact on reputational damage.
POLICY FRAMEWORK IMPLICATIONS	
25.	The decision to determine the application in the manner set out in this report is not contrary to the council's policy framework.

KEY DECISION?	No	
WARDS/COMMUNITIES AFFECTED:	N/A	
<u>SUPPORTING DOCUMENTATION</u>		
Appendices		
1.	Application for the variation of SEV licence made in respect of For Your Eyes Only, 135 – 136 High Street, Southampton, SO14 2BR.	
2.	A copy of the current Sexual Entertainment licence.	
3.	A copy of the decision notice of Summary Review Hearing 10/02/2020	
4.	A copy of the Licensing Act 2003 premises licence.	
5.	Procedure for hearing the application.	
Documents In Members' Rooms		
1.	None	
Equality Impact Assessment		
Do the implications/subject of the report require an Equality and Safety Impact Assessments (ESIA) to be carried out?		No
Privacy Impact Assessment		
Do the implications/subject of the report require a Privacy Impact Assessment (PIA) to be carried out?		No
Other Background Documents		

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None